DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

BAUGH & SONS CO. *v.* BLACK et al.

Nov. 16, 1916

[90 S. E. 607.]

1. Mortgages (§ 359*)—Order of Sale—Right to Change.—Where a deed of trust provided that the lands of one grantor should first be sold in enforcing the deed, and stop there if enough money was realized to pay the debt, although the trustee had no power to change the order without their consent, the grantors might change the order of sale by direction to the trustee at any time after the deed was made, and secured creditors could have no voice if the debt was paid.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. § 1074; Dec. Dig. § 359.* 10 Va.-W. Va. Enc. Dig. 98.]

2. Mortgages (§ 38 (1)*)—Evidence—Sufficiency.—Where a deed of trust executed by grantors on lands belonging to each provided that in enforcing the deed the trustee should first sell the lands of one grantor, and if a sufficient amount be derived, make no further sale, evidence held to support a finding that they were joint obligors, each liable as principal for one half and as surety for the other half of said debt.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. § 108; Dec. Dig. § 38 (1).* 10 Va.-W. Va. Enc. Dig. 29.]

3. Subrogation (§ 21*)—Persons Jointly Liable—Mortgage Debt—Necessity of Payment.—While generally, before a surety is entitled to become subrogated to the rights of the creditor against the principal debtor, he must actually have paid or satisfied the debt, where one grantor in a deed of trust, under which he was principal debtor for one-half and surety for the remainder, had paid one-half of the debt, although the deed provided that his land be sold to pay the debt before that of the cograntor, where the lands of the cograntor have been sold for more than sufficient to pay his share, and the proceeds are subject to the order of the court, a court of equity, in carrying out the principles of subrogation, will direct the remainder of the debt to be paid out of the funds in hand.

[Ed. Note.—For other cases, see Subrogation, Cent. Dig. § 47; Dec. Dig. § 21.* 12 Va.-W. Va. Enc. Dig. 1000.]

4. Subrogation (§ 7 (1)*)—Persons Jointly Liable—Mortgage Debt—Necessity of Payment.—Where a deed of trust executed by

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

two grantors, each liable as principal for one half and as surety for the other half, directed that the land of one grantor be first sold in enforcing the deed of trust, upon a sale of the land in satisfaction of the debt, the grantor would be entitled to show the relationship with his cograntee, and his right of subrogation would follow as a matter of substantial equity and right, and the lien would be kept alive for his benefit after the satisfaction of the debt.

[Ed. Note.—For other cases, see Subrogation, Cent. Dig. §§ 17, 77; Dec. Dig. § 7 (1).* 12 Va.-W. Va. Enc. Dig. 1003.]

5. Estoppel (§ 22 (2)*)—Estoppel by Deed—Provision in Mortgage.—In a deed of trust executed by two grantors, each liable as principal for one half the debt and as surety for the other, a provision that the land of one grantor be sold first in enforcement of the deed, although to some extent tending to show that the first grantor was the principal debtor, was equivocal and uncertain, and did not estop the first grantor from setting up that he was primarily obligated only as to one-half, as against subsequent creditors of his cograntor, who sought no information of the first grantor, who made no representations to them, even as to creditors who extended credit to the cograntee on account of the provisions.

[Ed. Note.—For other cases, see Estoppel, Cent. Dig. §§ 30-45; Dec. Dig. § 22 (2).* 6 Va.-W. Va. Enc. Dig. 293.]

Sims, J., dissenting.

Appeal from Circuit Court, Augusta County.

Suit by Baugh & Sons Company against J. T. Black and others. From a decree sustaining an exception of named defendant to a commissioner's report, plaintiff appeals. Affirmed.

Quarles & Pilson and *A. C. Gordan,* all of Staunton, *Gardner L. Boothe,* of Alexandria, and *Wm. A. Pratt,* of Staunton, for appellant.

Jos. A. Glasgow, of Staunton, for appellees.

SOUTHERN RY. CO. *v.* BURFORD.

Nov. 16, 1916.

[90 S. E. 616.]

1. Master and Servant (§ 124 (3), 127*)—Master's Duty—Inspection—Simple Tools.—A master is under no obligation to his servants to inspect during their use those common tools and appliances with which every one is familiar, and is not bound to repair defects arising in the daily use of such tools and appliances.

[Ed. Note.—For other cases see Master and Servant, Cent. Dig. §§ 235, 252; Dec. Dig. § 124 (3), 127.* 9 Va.-W. Va. Enc. Dig. 674.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.